86 No. 1581

In The

Supreme Court of the United States

October Term, 1986

LAWRENCE NEUMANN,

Petitioner,

v.

STATE OF ILLINOIS,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE COURT OF THE STATE OF ILLINOIS, FIRST DISTRICT

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QUESTIONS PRESENTED

On November 12, 1982, the Chicago police arrested the petitioner for the offenses alleged in the indictment. On that date the petitioner was arraigned in the Illinois trial court, pleaded not guilty, and pursuant to the Illinois Speedy Trial Act filed a written demand for a speedy trial or a trial to begin within 120 days from the date of his arrest. The defendant remained in Federal custody from November 12, 1982, until late February, 1983, and in State custody through March 14, 1983, when the trial court denied his petition for discharge for the State's failure to begin his trial within the period required by the Illinois Speedy Trial Act.

In affirming the trial court, the court below used the period of the petitioner's Federal custody to deny him relief under the Illinois Speedy Trial Act. The question presented to this Court is whether the court below's use of the petitioner's Federal custody amounts to a deprivation of his right to Constitutional Due Process.

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PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE COURT OF THE STATE OF ILLINOIS, FIRST DISTRICT

The petitioner, LAWRENCE NEUMANN, respectfully prays that a Writ of Certiorari issue to review the judgment and opinion of the Illinois Appellate Court, First District, rendered on August 27, 1986, which affirmed his conviction of murder and sentence to natural life imprisonment in the Illinois Department of Corrections.

OPINION BELOW

The opinion of the Illinois Appellate Court appears at Appendix A, *infra*, pp. A-1-A-18; it has been reported in 148 Ill. App. 3d 362, 499 N. E. 2d 487.

JURISDICTION

The judgment of the court below was entered on August 27, 1986. A timely petition for rehearing was denied on November 12, 1986. The Illinois Supreme Court denied the petitioner's petition for leave to appeal on February 6, 1987; the letter denying and his petition appears at Appendix B, *infra*, p. B-1. The jurisdiction of this court is invoked 28 U.S.C.§1257(3).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the Speedy Trial Clause of the Sixth Amendment to the United States Constitution, the Due Process Clause of the Fourteenth Amendment to the United States Constitution, Illinois Revised Statutes, Chapter 38, Section 103-5(a) and (d) in Volume 2 of Illinois Revised Statutes of 1981 on Pages 2024-2025, and Title 18, U. S. Code, Section 4082(b). These are reprinted in pertinent part in Appendix C-1.

STATEMENT OF THE CASE

On October 4, 1982, the grand jury indicted the petitioner and Wayne Matecki for two counts of murder, two counts of felony murder, and other offenses barred by the statute of limitations (R 2806-2814). The indictment number was 82-9855 (R 2815). On November 12, 1982, the petitioner was arraigned in the State trial court, waived reading of the indictment, and entered a plea of not guilty (R 2791). In an arrest report dated November 12, 1982, and prepared by the Chicago police (R 2805), it was stated that the petitioner was in the custody of the U. S. Marshal, that he was arrested on Indictment Number 82-9855, that he was in Federal custody awaiting sentencing on a Federal weapons violation, and that upon completion of the processing he would be turned over to the U. S. Marshals. The arrest report stated the charges in the indictment (R 2805).

On November 12, 1982, the petitioner filed a written demand for a speedy trial under the provision of Chapter 38, Paragraph 103-5, of the Illinois Revised Statutes (R 2835). In a motion to suspend the petitioner's demand for trial, which was filed on January 12, 1983, the State's Attorney stated: "That on November 12, 1982, the defendants entered demands for trial with this honorable court . . . ." (R 2884). In a letter to his attorney dated January 9, 1983, and filed on January 12, 1983, the petitioner stated: "I am ready for trial and forbid any type of continuance that will interrupt my right to a fast and speedy trial (the 120-day statute)" (R 2887).

On February 10, 1983, an agreement of detainers as to the petitioner was filed (R 2793). Relative to the hearing on this date, neither the court below nor the State said that the petitioner was present in the Illinois trial court. The record of this case in the court below does not contain any petition for a writ of habeas corpus ad prosecuendum or for a detainer. The petitioner was incarcerated in the Federal Metropolitan Correction Center in Chicago, Illinois, from November 12, 1982, until late

February, 1983. On November 12, 1982, the U. S. Marshal acted illegally in bringing the petitioner to the trial court; that is, as a Bureau of Prisons inmate, under Title 18, U. S. Code, Section 4082(b), he could be transferred to the Illinois trial court only if the U. S. Attorney General authorized it. Such authorization was not obtained until late February, 1983.

On March 14, 1983, the petitioner filed a petition for discharge in which he stated that he had filed a written demand for a speedy trial on November 12, 1982, that he was neither admitted to bail nor asked for a continuance, that more than 120 days have passed without his having been brought to trial, and that he is entitled to be discharged for want of prosecution pursuant to Illinois Revised Statutes, Chapter 38, Paragraph 103-5 (R 2920-2921).

In the hearing on March 14, 1983 (Supplemental Record), the trial court stated that it had a petition for discharge of the petitioner under Section 103.5 of the statute and inquired whether there was any amplification of that motion (R 3). The petitioner's attorney said that more than 120 days had elapsed since his arrest (R 3). The State's Attorney said that the petitioner had been in Federal custody (R 3). The trial court said that the petitioner had been transferred to State custody "a few days ago" (R 3). On Page 5 of its opinion, appended to this petition, the court below stated that the petitioner had been transferred to the Cook County jail during the end of February, 1983. In denying the petitioner's petition for discharge, the trial court stated: " . . . I think there is Illinois law that when a person is not within the jurisdiction of the State of Illinois, and under their control . . . that the term does not run, and although this is a somewhat unusual situation, I think that these cases are applicable, in addition to the previous rulings that I made concerning the Detainer Act (R -5).

In denying the petitioner relief under the Illinois

Speedy Trial Act, the court below stated on Pages 5 and 6 of its opinion, appended to this petition: "The trial court denied defendant's petition for discharge pursuant to Section 103-5 because on November 12, 1982, the defendant was not under the control of the State of Illinois. Therefore Section 103-5 was not applicable, and the statutory term did not begin to run. We find no error in the court's determination .... Indeed, the fact that defendant was accompanied by Federal Marshals each time he visited the Circuit Court of Cook County and was returned to the Metropolitan Correctional Center is evidence that he was not even in temporary custody of this State but remained in Federal custody."

HOW FEDERAL QUESTION WAS RAISED AND PASSED UPON

In appealing his conviction of murder to the court below, the petitioner contended that he had been denied his right to a speedy trial under Illinois law and that he had been denied his Federal, Constitutional right to a speedy trial. When the court below used the petitioner's Federal custody to deny him relief, the petitioner raised the Federal question, presented in this petition, in his petition for rehearing filed on September 11, 1986, and denied on November 12, 1986. The petitioner again raised this Federal question in petitioning the Illinois Supreme Court for leave to appeal. The Illinois Supreme Court denied the petitioner's petition for leave to appeal on February 6, 1987 (Appendix B, *infra*, p. B-1).

REASONS FOR GRANTING THE WRIT

The Court Below has Decided a Federal Question of Substance in a Way in Substantial Conflict With an Applicable Decision of this Court. To present clearly the argument about the Federal question and also to explain why the Federal question was not raised prior to the petition for rehearing in the court below, the petitioner will discuss briefly the Illinois law on the subject. In *People v. Fosdick* (1967), 36 Ill. 2d 524, 224 N.E. 2d 242, 245, the defendant was arrested on a Federal warrant and was lodged in the Champaign County jail which was the closest Federally approved jail. The defendant was then arrested on a State charge. The Illinois Supreme Court stated: "While defendant was apprehended on the Federal warrant, the record is clear that he was served with the Champaign warrant, and must be considered in custody on that charge as well." In litigating this question in the court below, the petitioner relied upon this language to show that he was in custody for the offenses alleged in the indictment while he was in Federal custody between November 12, 1982, and late February, 1983. When the Court below declined to follow *Fosdick*, the petitioner raised the Federal question in the petition for rehearing and in the petition for leave to appeal to the Illinois Supreme Court. And it should be mentioned that a correct application of the Illinois Speedy Trial Act will entitle the petitioner to have the dismissal of all charges against him. *People v. Mollett* (1975), 28 Ill. App. 3d 415, 328 N. E. 2d 697, 698-699. Illinois Revised Statutes, Chapter 38, ¶ 103-5(d).

The Sixth Amendment right to a speedy and public trial is encompassed in the due process clause of the Fourteenth Amendment, *Klopfer v. North Carolina*, 386 U.S. 213 (1967). By pursuing his rights under the Illinois Speedy Trial Act, the petitioner was merely exercising his right to a speedy trial guaranteed by *Klopfer*. In misusing the petitioner's custody at the Federal Metropolitan

Correction Center in Chicago, Illinois, from November 12, 1982, until late February, 1983, to deny him relief, the court below deprived the petitioner of his constitutional right to a speedy trial. *Smith v. Hooey*, 393 U.S. 374 (1969).

In *Smith v. Hooey*, 393 U.S. 374 (1969), the petitioner was incarcerated in a Federal prison in Kansas. A Texas grand jury indicted him for theft. The petitioner wrote to the state trial court and requested a speedy trial for the charge of theft. For several years the State of Texas did not try to obtain custody of him. This court held that the petitioner's confinement in a Federal prison does not absolve the state from its duties under the Constitutional guarantee of a speedy trial. The Federal authorities would have made the petitioner available for trial, if a writ of habeas corpus ad prosecuendum had been issued by the state court. This court stated: "By a parity of reasoning we hold today that the Sixth Amendment right to a speedy trial may not be dispensed with so lightly either. Upon the petitioner's demand Texas had a Constitutional duty to make a diligent, good-faith effort to bring him before the Harris County court for trial."

Under this authority state courts and officials must not use the Federal custody of defendants to deny them their rights to a speedy trial. Since the court below clearly expressed its use of the petitioner's Federal custody to deny him his rights under the Illinois Speedy Trial Act, it should be concluded that *Smith v. Hooey* applies to this case.

In this regard the circumstances or facts in the case should be noted. The court below ignored or overlooked completely the significance of the petitioner's substantial contact with the Illinois trial court on November 12, 1982; that is, on that date the petitioner was arrested by the Chicago police for the offenses alleged in the indictment, was arraigned in the trial court, pleaded not guilty, waived reading of the indictment, and filed a written demand for a speedy trial under the provisions of Chapter 38,

Paragraph 103-5, of the Illinois Revised Statutes (R 2791, 2805, 2835). In other words, the State of Illinois exercised jurisdiction over the petitioner or subjected him to legal process on that date. And on January 12, 1982, the State's Attorney revealed in writing his awareness of the petitioner's written demand for a speedy trial (R 2884). Furthermore, the court below failed to understand the significance of the petitioner's transfer to State custody and his availability for trial in late February, 1982, or approximately two weeks prior to the expiration of the 120-day period of the Illinois Speedy Trial Act on March 12, 1982 (Pages 5 and 6 of the court below's opinion, Appendix A, Pages 5 and 6). Upon duly considering these circumstances or facts, it is painfully obvious that the court below badly mishandled this matter and grossly impaired the petitioner's Constitutional right to a speedy trial.

The Federal Constitution Question is of Importance in the Administration of Justice. The petitioner respectfully cites Chief Justice Marshall's view relative to this Court's jurisdiction in *Cohens v. Virginia*, 19 U. S. (6 Wheat.) 264, 404 (1821):

> "It is most true that this court will not take jurisdiction if it should not; *but it is equally true, that it must take jurisdiction if it should.* The judiciary cannot, as the legislature may, avoid a measure because it approaches the confines of the constitution. We cannot pass it by because it is doubtful. With whatever doubts, with whatever difficulties, a case may be attended, we must decide it, if it be brought before us. We have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given. The one or the other would be treason to the constitution. Questions may occur which we would gladly avoid; but we cannot avoid them. All we can do, is to exercise our best judgment and conscientiously to perform our duty. In doing this, on the present occasion, we find this tribunal invested with appellate jurisdiction in all cases arising under the

> constitution and laws of the United States. We find no exception to this grant, and we cannot insert one." (Petitioner's emphasis)

Relative to whether the court should grant this petition for a writ of certiorari, it should be mentioned that the court has not dealt with a speedy trial question for many years and that this case may well afford the court an excellent opportunity to reaffirm its views about the Constitutional right to a speedy trial. A brief on the merits and plenary consideration will present more fully the Illinois Speedy Trial Act; the court may find that it passes Constitutional muster and that it can serve as an example to secure the Constitutional right to a speedy trial. And State courts and officials should be reminded that in dealing with Constitutional rights such as the one guaranteeing a speedy trial, they must observe minimum standards of intellectual honesty and must pay due attention to the circumstances or facts in every case.

CONCLUSION

For the foregoing reasons, this petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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APPENDICES

APPENDIX A
THIRD DIVISION
AUGUST 27, 1986

NOTICE

The text of this opinion may be changed or corrected prior to the time for filing of a Petition for Rehearing or the disposition of the same.

THE PEOPLE OF THE STATE OF ILLINOIS,

Plaintiff-Appellee,

vs.

LAWRENCE NEUMANN, Impleaded,

Defendant-Appellant.

APPEAL FROM THE CIRCUIT COURT OF COOK COUNTY.

HONORABLE KENNITH L. GILLIS, JUDGE PRESIDING.

JUSTICE McGILLICUDDY delivered the opinion of the court:

Following a jury trial, defendant Lawrence Neumann was convicted of murder, murder while committing armed robbery and murder while committing burglary. He was found eligible for the death penalty but the jury declined to impose it, and defendant was sentenced to natural life imprisonment in the Illinois Department of Corrections. Defendant appeals, contending that: (1) the trial court erred in denying his petition for discharge based on the denial of his right to a speedy trial; (2) the trial court erred in failing to disqualify itself from defendant's retrial after the original proceeding was declared a mistrial; (3) the State failed to prove defendant guilty of murder beyond a reasonable doubt; (4) the trial court erred in admitting certain evidence and excluding other evidence

about the State's key witness, Frank Cullotta and (5) the prosecutor's remarks during closing and rebuttal arguments were prejudicial and constituted reversible error.

On September 25, 1979, Robert Brown was strangled, beaten and stabbed to death in his clothing and jewelry store at 3120 North Nordica Street in Chicago. Jewelry was taken from the store, and the office safe was left open. The Chicago police were unable to solve the crime.

In April 1982, while imprisoned in Nevada, Frank Cullotta entered into an agreement with the Federal Bureau of Investigation (FBI) whereby in return for information about various crimes in which he was involved, he would become part of the Federal witness protection program, receive a maximum sentence of ten years imprisonment for cases pending against him at that time, and receive immunity from prosecution in Nevada and in Federal court regarding the matters he discussed.

Pursuant to this agreement, Cullotta related his involvment in the 1979 murder of Robert Brown. He was later granted immunity in Illinois and testified for the State at defendant's trial for the murder and robbery of Brown. Cullotta testified that he had lived in Chicago until 1978 when he moved to Las Vegas, Nevada. He stated that he had known Brown since 1964 and, in the mid-1970's, saw him once or twice each week. During that time, Brown would come to a discotheque Cullotta owned to try to sell jewelry out of his briefcase to bar customers and employees. Cullotta also testified that he had known the defendant since 1970. Defendant came to Las Vegas 12 or more times a year and would sometimes stay at Cullotta's apartment.

In September 1979, Cullotta was in Chicago. He had a short conversation with Wayne Matecki after which he called defendant on the phone. He told defendant he was with Matecki who had "something good" about which he could not talk over the phone and suggested that defen-

dant and Matecki contact one another within the next few days. Cullotta testified that he and Matecki discussed robbing Brown who had an unusually large amount of jewelry at his store. Subsequently, they and the defendant finalized the plan. They decided that Matecki, whom Brown knew, would enter the store first, pretending to be shopping. Defendant would enter later and rob both Brown and Matecki. Defendant would then take the proceeds of the robbery to Las Vegas, and he and Cullotta would sell it. Cullotta then returned to Las Vegas.

Cullotta further testified that in late September, he received a phone call from defendant who indicated there had been a problem with the robbery about which he would tell Cullotta when he saw him in a day or two. Cullotta next heard from the defendant a couple of days later at his apartment in Las Vegas. Defendant told Cullotta that he had the merchandise but that he had to kill Brown. When Cullotta asked him why, defendant explained that Matecki had become worried about repercussions from the Brown robbery and that they therefore both decided to kill Brown so there would be no witness. Cullotta then testified as to the details of the murder as recounted to him by the defendant.

Defendant and Cullotta sorted the jewelry from Brown's store which defendant had brought with him to Las Vegas in an attache case. The next day, Cullotta and defendant took the jewelry to a store owned by Sid Sargent in the commercial center of town. Sargent agreed to purchase some of the jewelry for $22,000 and gave them $14,000 that day. They returned the next day for the balance, refused to accept a check, and took the remaining $8,000 in cash. Cullotta testified that he received $7,300 and defendant took his and Matecki's shares back to Chicago. Cullotta also testified that defendant gave him one-third of $3,000 he had taken from Brown's body, and a gram of cocaine.

Cullotta stated that on October 1, 1979, he and defendant opened a safe deposit box at the Valley Bank in Las Vegas for the jewelry they had not sold to Sargent and an automatic gun defendant was carrying. On October 4, defendant returned to Illinois.

On October 4, 1982, defendant and Wayne Matecki were indicted by a Cook County grand jury for two counts of murder, two counts of felony murder and one count each of burglary, armed robbery and conspiracy. Defendant was arrested on November 12, 1982. Matecki was acquitted in a bench trial before Judge Kenneth Gillis. Defendant was convicted by a jury after a trial conducted simultaneously with Matecki's trial. When the jury was polled, however, one juror recanted his verdict and a mistrial was declared. A second jury trial was held, and defendant was convicted of murder, murder while committing armed robbery and murder while committing burglary.

On appeal, defendant first contends that the trial court erred in denying his petition for discharge for denial of his right to a speedy trial where he was arrested November 12, 1982 and trial began March 14, 1983. At the time of his arrest for the Brown murder, defendant was in Federal custody awaiting sentencing on a Federal weapons violation. On November 12, 1982, Federal marshals took him to a Cook County circuit courtroom where he was arraigned, waived reading of the indictment and pleaded not guilty. On that date, defendant asserted his right to a speedy trial pursuant to the Code of Criminal Procedure of 1963, Ill. Rev. Stat. 1981, ch. 38, par. 103-5. Defendant was then returned to the Metropolitan Correctional Center in the custody of the Federal marshals. Defendant appeared in the circuit court of Cook County on November 18, November 23 and December 1, 1982, but was not transferred to Cook County jail until the end of February 1983.

Defendant argues that for purposes of a speedy trial, the time he was in Federal custody after November 12,

1982 must be included in the computation of the statutory period. Section 103-5(a) provides that every person *in custody in this State* shall be tried by the court having jurisdiction within 120 days from the date he was taken into custody, unless there is a delay occasioned by the defendant. Ill. Rev. Stat. 1981, ch. 38, par. 103-5(a)(emphasis added).

The trial court denied defendant's petition for discharge pursuant to section 103-5 because on November 12, 1982, defendant was not under the control of the State of Illinois. Therefore section 103-5 was not applicable, and the statutory term did not begin to run. We find no error in the court's determination. (See, *e.g.*, *People v. Nolan* (1981), 102 Ill. App. 3d 895, 430 N.E.2d 345; *People v. Terlikowski* (1967), 83 Ill. App. 2d 307, 227 N.E.2d 521.) Indeed, the fact that defendant was accompanied by Federal marshals each time he visited the circuit court of Cook County and was returned to the Metropolitan Correctional Center is evidence that he was not even in temporary custody of this State but remained in Federal custody. (*People v. Dye* (1977), 69 Ill. 2d 298, 371 N.E.2d 630.) We further find no indication in the record of any voluntary relinquishment of custody by the Federal authorities to support defendant's citations of authority. See, *e.g.*, *People v. Fosdick* (1967), 36 Ill. 2d 524, 224 N.E.2d 242; *People v. Patheal* (1963), 27 Ill. 2d 269, 189 N.E.2d 309.

Defendant's statutory right to a speedy trial must therefore arise under the Interstate Agreement on Detainers, Ill. Rev. Stat. 1981, ch. 38, par. 1003-8-9. (*People v. Nolan*). The statutory term of 120 days, however, may be tolled at the trial court's discretion for a showing of good cause. (Ill. Rev. Stat. 1981, ch. 38, par. 1003-8-9, Art. IV(c), Art. VI(a).) On January 19, 1983, the State initiated proceedings for custody pursuant to the Agreement on Detainers by filing a warrant and request for temporary custody with the Federal Bureau of Prisons. Richard

Krasneck, a legal technician with the bureau, testified that when the warrant was lodged on January 20, defendant was informed that he could immediately request a final disposition of the pending indictment and that his failure to do so started an automatic 30-day waiting period, during which time the State would be unable to get custody of him.

The trial court found that defendant was informed and understood that he had an option to waive the 30-day waiting period and that his failure to waive it was delay attributable to him. The court therefore tolled the 120-day term by 30 days. In resolving whether a delay is attributable to the defendant, much deference is given to the trail court's determination; its decision should be sustained absent a clear abuse of discretion. *People v. Reimolds* (1982), 92 Ill. 2d 101, 440 N.E.2d 872.

Defendant does not allege error in the trial court's determination nor do we find any. Defendant further concedes that he was tried within two weeks of being transferred from Federal prison to the Cook County jail. His argument that he was denied his statutory right to a speedy trial must therefore fail.

Defendant also complains that his constitutional right to a speedy trial was violated. The constitutional right to a speedy trial cannot be defined in terms of an absolute standard of time in which the accused must be brought to trial. (*People v. Nolan* (1981), 102 Ill. App. 3d 895, 430 N.E.2d 345.) Thus, the speedy trial statute was enacted to give some concrete meaning to the right to a speedy trial. (*People v. Rhoads* (1982), 110 Ill. App. 3d 1107, 443 N.E.2d 673.) In *Rhoads* the court stated:

> "The operation of the statute typically will prevent the constitutional question of a speedy trial from arising, since if an accused is tried within 120 days after being taken into custody, or demand of trial while on bond, there will have been ordinarily no arbitrary or oppressive delay which the constitu-

tion prohibits." *People v. Rhoads*, citing *People v. Love* (1968), 39 Ill. 2d 436, 441, 235 N.E.2d 819).

Since we have already determined that defendant was tried within the statutory term, we find it unnecessary to address further his constitutional argument.

Defendant next contends that the trial court erred in denying defendant's petition for substitution of judges in which he alleged that the trial court was prejudiced against him. This decision was made after the original proceeding was declared a mistrial. As evidence of Judge Gillis' bias, defendant argues that when the court acted as the trier of fact in codefendant Matecki's concurrent bench trial, it determined that Frank Cullotta was a credible witness but that his testimony as to Matecki was uncorroborated. Matecki was therefore acquitted. Defendant maintains that in the court's discussion of the lack of corroboration as to Matecki, it implied that there was sufficient corroboration of Cullotta's testimony as to Neumann to find defendant guilty. This indicated prejudice against him.

A trial judge is under no duty to recuse himself because he presided at a prior trial of a codefendant or even because he presided at a prior trial of the defendant in the cause. (*People v. Massarella* (1979), 80 Ill. App. 3d 552, 400 N.E.2d 436, *cert. denied* (1981), 449 U.S. 1077, 66 L. Ed. 2d 799, 101 S. Ct. 855.) Further, to be disqualifying, the alleged bias or prejudice of the trial court must be shown to have stemmed from an extrajudicial source and result in an opinion on the merits on a basis other than what the judge learned from the case. (*United States v. Grinnell Corp.* (1966), 384 U.S. 563, 16 L. Ed. 2d 778, 86 S. Ct. 1698.) Allegedly erroneous findings and rulings by the trial court are insufficient reasons to believe the court had personal bias or prejudice for or against a defendant. *Massarella.*

Moreover, this court has decided that the burden of establishing actual prejudice is on the defendant. (*People*

v. Nickols (1976), 41 Ill. App. 3d 974, 354 N.E.2d 474.) In the absence of a showing of animosity, hostility, ill will or distrust towards the defendant, proof falls short of establishing the actual prejudice which would interfere with a fair trial. (*People v. Vance* (1979), 76 Ill. 2d 171, 390 N.E.2d 867.) In the case before us, defendant has failed to prove actual prejudice. Taken in context, the court's statements about Cullotta's credibility indicate no prejudice against the defendant. Indeed, the court repeatedly and thoughtfully discussed the theory of corroboration which, it emphasized, must be personal to each defendant. Further, the court specifically rejected the State's argument that its evidence against defendant corroborated Cullotta's statements as to defendant and would therefore corroborate Cullotta's statements as to Matecki.

Additionally, at the hearing of defendant's motion for a new trial, Judge Gillis stated that he had no preconceived ideas about defendant's guilt prior to defendant's retrial and that his statements regarding Matecki's acquittal were in no way intended to indicate prejudice against the defendant. We therefore hold that the trial court properly refused to disqualify itself from defendant's second trial.

Defendant next contends that the State failed to prove him guilty of murder beyond a reasonable doubt. He argues that, as a matter of law, Frank Cullotta was not a credible witness. He maintains that by virtue of Cullotta's extensive criminal record, because he was an accomplice to the murder, and because his testimony was not sufficiently corroborated, no rational trier of fact could have found defendant guilty beyond reasonable doubt.

We note first that Cullotta's criminal record does not disqualify him as a witness; rather, his criminal record goes to the issue of his credibility. (Ill. Rev. Stat. 1981, ch. 38, par. 155-1.) Moreover, it is the jury's function to resolve factual disputes, assess witness credibility and

determine the weight and sufficiency of evidence, and the jury's verdict will not be reversed unless the evidence is so unsatisfactory or improbable that a reasonable doubt as to defendant's guilt remains. *People v. Steffens* (1985), 131 Ill. App. 141, 475 N.E.2d 606.

Defendant also objects to Cullotta's testimony because he was an accomplice to the crime. Again, whether accomplice testimony, corroborated or uncorroborated, is a satisfactory basis for a conviction goes to the weight of the evidence and is therefore in the province of the finder of fact. *People v. Lee* (1984), 128 Ill. App. 3d 937, 471 N.E.2d 988; see also *People v. Winfield* (1983), 113 Ill. App. 3d 818, 447 N.E.2d 1029 (even though accomplice testimony is viewed with suspicion and scrutinized carefully on review, the fact that a witness is an accomplice or expect leniency affects only the weight to be given his testimony).

Further, we do not agree that defendant was not proven guilty beyond a reasonable doubt because Cullotta's testimony as to who committed the murder was insufficiently corroborated. The State presented evidence to corroborate virtually every aspect of Cullotta's testimony. The State introduced records of the car dealer from whom Cullotta purchased a Cadillac immediately before leaving Chicago for Las Vegas. Sid Sargent testified regarding the purchase of the jewelry from Cullotta and defendant. He further testified about the subsequent sale of several of the pieces of jewelry to friends.

A friend-purchaser testified as to the purchase, and Brown's ex-wife testified that those items and another which Cullotta had reset for himself had belonged to her ex-husband personally. Safe deposit box records from Las Vegas were introduced to corroborate Cullotta's testimony that he and defendant had opened a box while defendant was in Las Vegas after the murder. Although defendant appears to concede that the State sufficiently corroborated Cullotta's testimony about what jewelry was sold and

defendant's involvement with the jewelry in Las Vegas, he objects that there was no corroboration of Cullotta's testimony that the defendant actually killed Brown.

Cullotta, however, recounted in gruesome detail the events of the evening of September 25, 1979, as told to him by the defendant. At the trial, the State introduced photographs of the body and the crime scene which supported the story Cullotta recounted. The relevant physical evidence recovered from the scene was introduced, and various Chicago police officers and crime lab personnel testified about their investigations.

Most compelling was the testimony by Dr. Eupiel Choi, a forensic pathologist with the Cook County medical examiner's office. Dr. Choi testified that there were three independent causes of death: asphyxiation, a severed aorta and a fractured skull. The wounds were consistent with the activities described by Cullotta as told to him by the defendant. The State also introduced defendant's bank records which showed the deposits of large sums of money during the late fall of 1979.

The defendant testified in his own behalf and produced several witnesses in support of his theory that Cullotta himself had killed Brown. However, speculation that another person committed the offense does not necessarily raise a reasonable doubt as to the guilt of the accused, even if that speculation is supported by circumstantial evidence. (*People v. Williams* (1985), 131 Ill. App. 3d 597, 475 N.E.2d 1082.) Further, the jury is not required to give all testimony equal weight and may place greater reliance on certain testimony. (*Williams*.) We find that after evaluating all the evidence presented, the jury properly found the defendant in this case guilty beyond a reasonable doubt.

Defendant next objects to the admission of certain evidence about Frank Cullotta's connections to organized crime and the exclusion of other evidence about Cullotta's involvement in a 1962 murder. Defendant maintains that

the prosecution attempted to "launder" Cullotta as a witness by eliciting extensive testimony about his involvement with organized crime, the threat on his life by the crime syndicate and his subsequent agreement to cooperate with the FBI, his participation in the Federal witness protection program, and the grants of immunity under which he was testifying.

Whether offered evidence will be admitted or excluded depends on whether it tends to make the question of guilt more or less probable, that is whether it is relevant. (*People v. Ward* (1984), 101 Ill. 2d 443, 463 N.E.2d 696.) The admissibility of evidence is within the sound discretion of the trial court, and its ruling will not be reversed absent a clear showing of abuse of discretion. (*People v. Ward; People v. Hunter* (1984), 124 Ill. App. 3d 516, 464 N.E.2d 659.) This is true for the reception of evidence collateral to an issue in a case and intended to affect the credibility of a witness as well; its admissibility rests within the discretion of the trial court and will not be disturbed absent an abuse of that discretion. *People v. Allison* (1983), 115 Ill. App. 3d 1038, 452 N.E.2d 148.

Defendant has not shown nor do we find any abuse of the trial court's discretion in the admission of evidence about Cullotta's organized crime background and subsequent deals with the Federal and State governments. The complained-of evidence affected Cullotta's credibility and was therefore probative of his testimony.

Defendant next argues that the trial court should have excluded the parts of Cullotta's testimony indicating his knowledge of Robert Brown's connection to organized crime through his silent partners, Al Bruno and Alan Dorfman, Brown's ex-wife's similar testimony and Cullotta's testimony as to the conversations with Matecki in which the robbery was planned. We find no error in the admission of this evidence which was relevant to explain why the jewelry from Brown's store had to be sold away from

Chicago and which tended to corroborate the defendant's decision to kill Brown in order to avoid repercussions from organized crime about which Cullotta testified extensively.

Defendant also complains that the trial court erroneously excluded testimony that while Cullotta had previously testified to being only indirectly involved in the 1962 murder of Jerry Lizner, he told a defense witness that he had committed the murder by putting the man's head in a vice and turning the vice until the man's eyes popped out. The court based its refusal to allow the testimony on *People v. Powell* (1973), 53 Ill. 2d 465, 292 N.E.2d 409 and *People v. Rainford* (1965), 58 Ill. App. 2d 312, 208 N.E.2d 314. Those cases are authority for the proposition that a proper foundation must be laid where an attempt is made to impeach a witness through the use of a prior inconsistent statement; where no proper foundation was laid when the witness was on the stand, the witness may not be recalled and interrogated about the statement because to do so would unfairly highlight the attempted impeachment. The trial court in the instant case, having determined that Cullotta was not asked about the statement he allegedly made to the defense witness, properly excluded that testimony.

Defendant next argues that he was unable to rehabilitate Wayne Matecki after Matecki was cross-examined on his failure to report to the police his knowledge of the 1962 murder of Lizner. In an offer of proof, Matecki stated that he did not contact the police because he did not want to be Cullotta's next victim. The trial court allowed the offer of proof to stand and noted that the prosecution's objection to the testimony had been sustained. Defendant concedes in his brief that evidence which would unduly arouse the passions of the jury is properly excluded. (*People v. Reimnitz* (1979), 72 Ill. App. 3d 761, 391 N.E.2d 380, *cert. denied* (1982), 456 U.S. 906, 72 L. Ed. 2d 162, 102 S. Ct. 1751.) Matecki's self-serving statement was not probative of a fact in issue in the instant

case and could only have served to arouse the passions of the jury; it was therefore properly excluded.

Defendant's final contention is that certain of the prosecutor's remarks during closing and rebuttal arguments constituted reversible error. A prosecutor has wide latitude in closing argument, and the trial court's determination of the propriety of that argument will not be disturbed absent a clear abuse of discretion or substantial prejudice to the defendant. (*People v. Barney* (1982), 111 Ill. App. 3d 669, 444 N.E.2d 518.) Where allegedly improper comments do not constitute a material factor in the conviction, or where they are of such minor character that prejudice to defendant is not their probable result, the verdict will not be disturbed on appeal. (*People v. Lamacki* (1984), 121 Ill. App. 3d 403, 459 N.E.2d 1142, *cert. denied*, ___U.S. ___, 83 L. Ed. 2d 193, 105 S. Ct. 256.) In applying this test, the entire argument must be considered and the complained-of comments placed in context. *People v. Mitchell* (1975), 35 Ill. App. 3d 151, 341 N.E.2d 153.

We have determined that in the instant case many of the complained-of remarks were in fact fair comment on matters properly in evidence and reasonable inferences that could be drawn therefrom. (See, *e.g.*, *People v. Weatherspoon* (1978), 63 Ill. App. 3d 315, 379 N.E.2d 847.) We therefore address only those remarks which were not comments on the evidence presented at trial.

Defendant argues that the prosecution impugned the integrity of defense counsel, defendant and defendant's wife. The record, however, reveals that the trial court sustained most of defense counsel's objections to the complained-of comments and instructed the jury to consider only the evidence in the case and warned the jury that closing arguments are not evidence and that arguments not based on the evidence must be disregarded. Such curative instructions have been held to cure prejudice. (*People v. Faysom* (1985), 131 Ill. App. 3d 517, 475 N.E.2d 945;

People v. Rowe (1983), 115 Ill. App. 3d 322, 450 N.E.2d 804.) We find that the comments to which defense objections were overruled are hardly such that the jury would have reached a different result had the comments not been made. *People v. Barnes* (1983), 117 Ill. App. 3d 965, 453 N.E.2d 1371.

Defendant also objects to the prosecution's comment about the lack of any defense witnesses to testify about a party defendant allegedly attended the night of the murder. We find, however, that the remark was invited by defense counsel's argument that the State should have produced documentary evidence about the party to show the hall was rented on the night in question. A defendant cannot complain of statements made in rebuttal which were invited by the defendant's own argument. *People v. Vriner* (1978), 74 Ill. 2d 329, 385 N.E.2d 671, *cert. denied* (1979), 442 U.S. 929, 61 L. Ed. 2d 296, 99 S. Ct. 2858.

Defendant's final argument is that the cumulative effect of the prosecutorial misconduct prejudiced his right to a fair trial. We disagree. In light of the evidence of defendant's guilt, we find that none of the complained-of remarks, either singly or taken together,could have been a material factor in his conviction, nor would the result have been different in their absence. (See, *People v. Faysom.)* We therefore decline to reverse defendant's conviction on this ground.

For the foregoing reasons, the judgment of the circuit court of Cook County is affirmed.

Affirmed.

RIZZI, P.J., and McNAMARA, concur.

APPENDIX B

ILLINOIS SUPREME COURT
JULEANN HORNYAK, CLERK
SUPREME COURT BUILDING
SPRINGFIELD, ILL. 62706
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February 6, 1987

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No. 64525 - People State of Illinois, respondent, v. Lawrence Neumann, etc., petitioner. Leave to appeal, Appellate Court, First District.

The Supreme Court today DENIED the petition for leave to appeal in the above entitled cause.

The mandate of this Court will issue to the Appellate Court on March 2, 1987.

APPENDIX C

Constitutional and Statutory Provisions Involved

The Sixth Amendment to the United States Constitution provides in pertinent part: "In all criminal prosecutions, the accused shall enjoy the right to a speedy . . . trial . . . ."

Section 1 of the Fourteenth Amendment to the United States Constitution provides in pertinent part: "nor shall any State deprive any person of life, liberty, or property, without due process of law . . . ."

Illinois Revised Statutes (1981), Chapter 38, Section 103-5(a) and (d), Volume 2, on Pages 2024 and 2025, are set forth as follows:

Section 103-5(a)

Every person in custody of this State for an alleged offense shall be tried by a court having jurisdiction within 120 days from the date he was taken into custody unless delay is occasioned by the defendant, by an examination for competency ordered pursuant to Section 104-2 of this Act, by a competency hearing, by an adjudication of incompetency for trial, by a continuance allowed pursuant to Section 114-4 of this Act after a court's determination of the defendant's physical incapacity for trial, or by an interlocutory appeal.

Section 103-5(d)

Every person not tried in accordance with subsections (a), (b), and (c) of this Section shall be discharged from custody or released from the obligations of his bail or recognizance.

Title 18, U. S. Code, Section 4082(b)

The Attorney General may designate as a place of confinement any available, suitable, and appropriate institution or facility, whether maintained by the Federal Government or otherwise, and whether within or without the judicial district in which the person was convicted, and may at any time transfer a person from one place of confinement to another.

NO. 86-1581

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1986

LAWRENCE NEUMANN

Petitioner,

vs.

PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

ON PETITION FOR A WRIT CERTIORARI TO THE APPELLATE COURT OF ILLINOIS FIRST DISTRICT

BRIEF FOR RESPONDENT IN OPPOSITION

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QUESTIONS PRESENTED FOR REVIEW

Whether defendant received his right to a speedy trial where he was not in state custody until several days before trial and where he insisted on availing himself of a 30-day waiting period to delay his eventual delivery into state custody.

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OPINION BELOW

The order of the Appellate Court of Illinois, First District, affirming defendant's conviction of murder was issued as a published opinion on August 27, 1986. It appears at Appendix A of the Petitioner's Petition for a Writ of Certiorari and at 148 Ill. App. 3d 362, 499 N.E.2d 487. The Illinois Supreme Court denied Leave to Appeal on February 6, 1987.

JURISDICTION

The jurisdictional requisites have been set forth in the Petition for Writ of Certiorari. However, as treated more fully within the following argument, the respondent believes that the petition has failed to show any good reason for this Court to exercise jurisdiction to review the judgment in question by writ of certiorari.

STATEMENT OF THE CASE

Defendant Lawrence Neumann was indicted in October, 1982, along with Wayne Matecki for murder while committing armed robbery, felony murder, burglary and conspiracy. The incident giving rise to these charges took place in September, 1979, when defendant and Matecki robbed, beat, strangled and stabbed to death a Chicago jeweler, Robert Brown.

The jury convicted defendant of murder, murder while committing burglary and murder while committing armed robbery. Following the penalty phase, the jury found defendant eligible for the death penalty but could not unanimously recommend imposition of the penalty. Thereupon Judge Gillis sentenced defendant to a term of natural life imprisonment. The Appellate Court of

Illinois affirmed and the Surpeme Court of Illinois denied leave to appeal. Defendant now appeals.

The facts as they relate to the action have been set forth in the Petition for Writ of Certiorari and in the Appellate Court Opinion attached to that Petition. Thus, pursuant to Supreme Court Rules they will not be repeated here.

REASON FOR DENYING THE PETITION FOR WRIT OF CERTIORARI

DEFENDANT RECEIVED HIS RIGHT TO A SPEEDY TRIAL WHERE HE WAS NOT IN STATE CUSTODY UNTIL SEVERAL DAYS BEFORE TRIAL AND WHERE HE INSISTED ON AVAILING HIMSELF OF A 30-DAY WAITING PERIOD TO DELAY HIS EVENTUAL DELIVERY INTO STATE CUSTODY.

Defendant contends that he was denied his right to a speedy trial where he was arrested by Chicago Police on November 12, 1982 while awaiting sentencing in federal custody but was not tried until March 14, 1983. The People maintain that defendant received his right to a speedy trial where he was not actually in state custody until several days before trial. Furthermore, by availing himself of the 30-day waiting period

provided in the Interstate Agreement on Detainers defendant waived any claim that he should have been tried within 120 days of his arrest.

On November 12, 1982, defendant was incarcerated in the Metropolitan Correctional Center in Chicago awaiting sentencing on federal weapons charges. At this time defendant was arrested and brought in the custody of federal marshalls to Cook County Circuit Court for arraignment. (R. 2805) Defendant was then returned to the federal facility in the custody of the federal marshalls. Defendant was finally sentenced on the federal charges on November 15, 1982. (R. 2596) Defendant himself admitted that he remained in federal custody at the Metropolitan Correctional Center until March 1983 at which time he was transferred into actual state custody. (R. 16) Defendant's

first trial in this cause commenced March 14, 1983. (R. 3)

The 120 day period in which to try a defendant under the Illinois Speedy Trial Act comes into play when the defendant is "taken into custody" on a charge for which he is later tried. Ill. Rev. Stat. 1982, ch. 38, sec. 103-5(a). Clearly defendant was in federal, not state custody when arrested and up until just days before the trial commenced. Indeed this case is remarkably similar to People v. Dye, 59 Ill. 2d 298, 371 N.E.2d 630 (1977) where the court found that, since federal marshalls accompanied defendant on each and every visit to court and housed him in city jail rather than county jail, defendant was never in even temporary custody of Illinois authorities. However, defendant seems to feel that he was in the "constructive custody" of state officials who

were using the federal authorities to hold defendant for them. Such a claim is contrary to Illinois law.

In People v. Davis, 97 Ill. 2d 1, 452 N.E.2d 525 (1983), the court held that a defendant held in custody in one county on an unrelated offense will not be considered to be "in custody" in the second county until the first proceedings have ended, even where defendant is served with a warrant, a hold or detainer is lodged, or he is brought before a court in the second county while still in custody of the first county where the original charges are still pending. Regardless of when a defendant is served with an arrest warrant, he is not "in custody" of the second county until the proceedings in the first county have terminated. People v. Gardner, 105 Ill. App. 3d 103, 433 N.E.2d 1318 (5th Dist. 1982); People v. Akins, 132

Ill. App. 2d 1033, 270 N.E.2d 107 (3d Dist. 1971). In Akins, the defendant was in jail in Will County and a detainer from Kankakee County was lodged against him. There the court held that the 120-day period began when Kankakee County authorities took defendant from Will County on complaint and warrant. However, in Akins, the defendant was in jail pending trial in Will County and was, therefore, not available for immediate prosecution in Kankakee. In People v. Kerley, 72 Ill. App. 3d 916, 391 N.E.2d 225 (2d Dist. 1979) the court found that a defendant is considered "in custody" in connection with a second county's charges on the date judgment and sentence of the first county's charge is entered. The court reasoned that the second county's detainer lodged with the Cook County jail was sufficient to place the defendant in custody

upon the date of sentencing, as no obstacle would exist to trying defendant in the second county. But in People v. Karr, 68 Ill. App. 3d 1040, 386 N.E.2d 927 (2d Dist. 1979), the court found that defendant is not "in custody" of second county until the proceeding against him in the first county is terminated and he is then either returned to, or held in custody for, the second county.

In the case at hand, defendant was in custody of one jurisdiction, the Federal government, when arrested by a second jurisdiction, the State of Illinois on November 12. The federal proceedings had not yet terminated and would not terminate until after November 15, when defendant was sentenced. Thus, under the rationale of the above-cited cases, the very earliest time defendant would be considered in custody for this offense was November 15. Yet there is

no evidence in the record that defendant was at the time being held for the Illinois authorities instead of awaiting further proceedings in the many federal prosecutions in which he was involved. However, inquiry into such issues is essentially moot since defendant was tried beginning March 14, 1983 which was 119 days after November 15 when defendant was actually sentenced on the federal charge. Thus, defendant was tried within 120 days of being taken into custody and the Speedy Trial Act was complied with.

In his brief on this point, defendant relies on People v. Fosdick, 36 Ill. 2d 524, 224 N.E.2d 242 (1967) to claim that defendant should have been considered in state custody from the date of his arrest. However, in Fosdick, Champaign County officials voluntarily relinquished custody of defendant to another county, dropped pending

charges against defendant and then later refiled identical charges after the other county's ended. The Illinois Supreme Court found that Champaign County's attempt to evade the speedy trial statute deprived defendant of his rights. In two later cases, the Supreme Court has held that the ruling in Fosdick is limited to its facts which clearly showed evasion and the court would not extend the rationale. People v. Davis, 97 Ill. 2d 1, 452 N.E.2d 525 (1983); People v. Bixler, 49 Ill. 2d 328, 275 N.E.2d 392 (1971). In the case at hand, there is absolutely no evidence of evasion in the record. In short, the Illinois Courts in this case correctly interpreted and applied well-settled Illinois law on the Speedy Trial Act.

In order to be entitled to trial within 120 days of arrest, a defendant generally must be in custody in Illinois.

People v. Terlikowski, 83 Ill. App. 2d 307, 227 N.E.2d 521 (3d Dist. 1967). If a defendant is serving a term of imprisonment in another state or in a federal correctional institution then the Uniform Agreement on Detainers Act (Ill. Rev. Stat. 1982,ch. 38, sec. 1003-8-9) applies. People v. Merryfield, 83 Ill. App. 3d 1017, 404 N.E.2d 907 (2d Dist. 1980).

At a February 10, 1983 hearing, Richard Krasneck, a legal technician with the Federal Bureau of Prisons, testified that he handles various legal documents including detainers which are filed with the Metropolitan Correctional Center in Chicago. (Supp. 3) Krasneck stated that a warrant in the instant case was lodged against defendant, then serving a 10 year Federal sentence, on January 20, 1983. (Supp. 4) Pursuant to the lodging of this detainer,

Krasmeck read defendant his rights under the Detainer Act, and defendant signed a form acknowledging such rights. (Supp. 5) Defendant was informed that he could demand a final disposition in this case if he so desired. (Supp. 6) However, defendant never requested a final disposition in this case. (Supp. 11) To the contrary, defendant chose to rely on the 30 day waiting period in the Detainer Act before he could be delivered into state custody. (Supp. 12) While claiming to demand a speedy trial, defendant chose not to waive his 30 day waiting period and therefore delayed his entry into state custody. After the 30 day period has run, it takes about 2 to 3 weeks to do the necessary paperwork before defendant is actually delivered into state custody. (Supp. 16) Here, defendant's waiting period commenced when the arrest warrant became lodged against

him on January 20, 1983. Defendant's 30 day period was therefore over on February 20. With 2 to 3 weeks of paper work to handle this meant defendant would arrive in State Custody in mid-March. This is exactly what happened as defendant himself admitted on March 14, 1983, when he stated he was in federal custody until just a few days before this date. (R. 16)

It is axiomatic that for speedy trial purposes, where a delay is attributable to the defendant, the statute is suspended. People v. Christensen, 102 Ill. 2d 321, 465 N.E.2d 93 (1984). Here defendant took the inconsistent position of demanding trial while at the same time refusing to waive the 30 day waiting period provisions of the Detainer Act. On February 10, Judge Gillis ruled that the 120 day period would be extended 30 days due to defendant's delaying tactics. As the trial court found:

Really, under the situation here, to look at it, there is practically no effect way to bring Mr. Neumann back, while we are in this 30-day period, which we are now in and we will be in until February the 20th, which would be two or three days after the expiration of the 120-day period.

We have a situation here where the defendant, Mr. Neumann, is requesting and demanding trial. The State is willing and anxious to go to trial. The State may not - - cannot get Mr. Neuman here because of the 30-day waiting period.

Again, Mr. Neumann has not waived. I find that this failure to waive the 30-day waiting period is a delay attributable to him. I believe that the additional time the State would have is that 30-day period for filing paperwork, I cannot find attributable to the defendant Neumann, so, in short, I will rule that the term has an additional 30 days. (Supp. 30)

Furthermore, as the trial judge pointed out, the People stood ready to go to trial on the original scheduled trial date of February 18, 1983, a date well within the statutory 120 days. (Supp. 31) Only defendant's attempt to create a conflict between the Detainer Act waiting period and the Speedy Trial Act 120 day period prevented the People from trying defendant on the originally scheduled date.

Although the statutory requirement for speedy trial is not coextensive with the safeguards guaranteed by the State and federal constitutions, compliance with the statute usually operates to prevent constitutional questions from arising since the constitutional safeguards protect only against arbitrary and unreasonable delays. People v. Baskin, 38 Ill. 2d 141, 230 N.E.2d 208 (1967). In United States v. MacDonald,

435 U.S. 850, 56 L.Ed.2d 18, 98 S.Ct. 1547 (1978), this Court listed four factors in determining whether defendant has been deprived of his constitutional right to a speedy trial. The first factor is the length of the "delay" in bringing defendant to trial. Here, defendant was tried within 122 days of being arrested and only 119 days after being sentenced on federal crimes. The second factor is the reason for the delay. Here, as shown above, defendant's own actions in attempting to use the Detainer Act as a dilatory tactic served to delay his trial. The third factor is whether defendant asserted his right. Here, defendant ostensibly demanded trial while actually trying to prevent being delivered into State custody so such trial could begin. Finally, it must be determined whether defendant was prejudiced by the delay. Prejudice to the

defendant in turn must be considered in light of the interests the speedy trial right was designed to protect. As set out in Baker v. Wingo, 407 U.S. 514, 33 L.Ed.2d 101, 92 S.Ct. 2182 (1972), these factors are (i) prevention of oppressive pretrial incarceration - not a problem here as defendant's various federal sentences necessitated his incarceration notwithstanding the existence of this case; (ii) minimization of defendant's anxiety and concern-again, if this were a concern with the defendant, he could have waived the Detainer Act waiting period; and (iii) limitation of the possibility that defendant's defense will be impaired - yet defendant here is unable to show how his actions have been impaired through the passage of several weeks time.

In short, the defendant was never in custody of the State of Illinois until

just days before the trial and any claimed delay in trying defendant is being tried came as a result of his own dilatory tactics. Defendant therefore received the benefit of his constitutional right to a Speedy Trial.

CONCLUSION

The People of the State of Illinois respectfully request that the petition for a writ of certiorari be denied.

Respectfully submitted,

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